IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

W.A.No.977 of 1998

Vengaivasal Village Panchayat
by its President .. Appellant/Petitioner

Vs

1. The State of Tamilnadu
   by its Secretary to the
   Revenue Department
   Fort St.George
   Chennai - 600 009.

2. The Commissioner of Land
   Administration, Ezhilagam
   Chepauk, Chennai-600 005.

3. The District Collector
   Kancheepuram.

4. The Commissioner
   St.Thomas Mount Panchayat Union
   Chennai. .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 4.12.1997 made in W.P.No.18208 of 1997.

For Appellant : Mr.K.Chandru
Senior Counsel
for Mr.K.Kannan

For Respondents: Mr.E.Sampathkumar
Government Advocate

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JUDGMENT

(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The core question of law that arises in the above appeal, as projected by Mr.K.Chandru, learned senior counsel for the appellant, is "whether the action of the Government, first respondent, in passing the impugned government order, viz., G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, by exercising the power conferred under Board Standing Order 21, reclassifying the public road, which power vests with the appellant/village panchayat (local body) whose vested right, power and jurisdiction are well defined under the provisions of the Tamil Nadu Panchyats Act, 1944, ignoring the concept of Panchayat Raj enabling them to function as institutions of self-government under Article 243G of the Constitution of India, is valid?"

2. The appellant in the appeal is the writ petitioner in W.P.No.18208 of 1997 filed for issue of a writ of Certiorarified Mandamus to call for the records of the first respondent in G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, quash the same and to forbear the respondents from reclassifying the property in Survey Nos.237 and 238 of Vengaivasal Village from Vandi-patti (cart-track) Poromboke to Natham Poromboke and assigning it to Raj Bhavan last grade servants.

3. Concededly, the appellant/Village Panchayat is discharging its rights and duties defined under the provisions of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the "Act") through the body elected under the provisions of the said Act and the Rules farmed thereunder.

4. The character of the impugned land located in Survey Nos.237 and 238 of Vengaivasal Village is classified as Vandi-pattai poromboke (Cart-track), a road within the meaning of the "public road" defined under Section 2(28) of the Act, and it is not in dispute that the same vests with the appellant/Village panchayat as per Section 125(1) of the Act.

5. On a representation made by the last grade employees of the Raj Bhavan, the Government/first respondent, by G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, which is impugned in the writ petition, proposed to reclassify the property in Survey Nos.237 and

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238 of Vengaivasal Village from Vandi-patti Poromboke (cart-track) to Natham Poromboke, and to assign the same to the last grade servants of the Raj Bhavan without any consent of the appellant/Village Panchayat by way of appropriate resolution, under the pretext that the appellant/Village Panchayat had not responded to the request of the Collector made in his letter dated 17.2.1997 requiring the appellant/ Village Panchayat to pass necessary resolution to reclassify the impugned land for the purpose of assigning the same to the last grade employees of the Raj Bhavan.

6. Based on the strength of the impugned G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, the Commissioner/fourth respondent, in his letter dated 12.3.1997 required the appellant/Village Panchayat to pass appropriate resolution for reclassifying the Vandi-patti Poromboke (cart-track) to Natham Poromboke. Hence, the above writ petition.

7. When the matter came before the learned Single Judge, neither the Government nor the Collector filed any counter affidavit.

8. However, the learned Single Judge in the order dated 4.12.1997 made in W.P.No.18208 of 1997, interpreting Section 125(2) of the Act, came to the conclusion that what is required under Section 125(2) of the Act is only consultation with the panchayat, but not their consent, and held that the right of the Panchayat is not affected in any manner by the impugned G.O.(Grade) No.239, Revenue Department, dated 27.2.1997 and therefore, refused to interfere with the impugned G.O.(Grade) No.239, Revenue Department, dated 27.2.1997 and dismissed the writ petition, finding no illegality or violation of the provisions of the Act. Aggrieved by that the writ petitioner has filed the above appeal.

9. Till the above appeal was taken up for final hearing on 13.12.2004, the respondents have not chosen to file any counter affidavit. However, we granted time till today (22.12.2004) to enable the Government to file a counter affidavit. Surprisingly, the respondents have chosen to file a counter affidavit on behalf of the third respondent, which is dated 28.10.2003 only today, viz., 22.12.2004 under S.R.No.4665. The relevant portion of the counter affidavit filed on behalf of the third respondent reads as follows:

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"I submit that the land in S.No.237 and 238 of Vengaivasal Village, Tambaram Taluk, Kancheepuram District was classified as "Battai Poramboke" (Cart-track). The Government in G.O.239, Revenue Department, dated 27.2.1997 ordered for the assignment of 1.88.0 Hectares in the above land to 71 employees of Raj Bhavan on collection of market value. In the G.O. cited the Government ordered that the classification of the above land be transferred to village site so as to enable the authorities to assign the lands and in favour of the employees. The Government directed the Collector of Kancheepuram District to take further action in pursuant to the Government Order. In pursuant to the Government orders cited, the Collector of Kancheepuram District initiated further action for the assignment of the above lands to the Raj Bhavan Employees and towards that end addressed the St.Thomas Mount Panchayat Union Commissioner and the President of Vengaivasal Village Panchayat in his letter No.Rc.18350-99-N5 dated 17.2.1997 favouring a resolution, for the transfer of classification of the land from "Vandai Battai" (Cart-tract) to Village Site."

10. The facts explained above by the Collector/third respondent would only go to show that even before getting an appropriate resolution from the appellant/Village Panchayat, the Government had chosen to reclassify the Vandi-patti poromboke (Cart-Track) land to Natham poromboke land by G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, by exercising the power conferred under Board Standing Order 21, ignoring the relevant provision of Section 125(1) read with Section 2(28) of the Act.

11. The respondents, of course, have also taken a stand that the Government is empowered, by notification, to exclude from the operation of the Act any such public road under Section 125(2) of the Act and it is not disputed in the counter affidavit that during the pendency of the writ appeal, the parties to the appeal are maintaining status-quo with regard to the impugned land and the possession of the land has not been handed over to any individual pursuant to the impugned Government order.

12. Highlighting the case of the appellant/Village Panchayat as well as the stand taken by the respondents, referred to above in the counter affidavit filed on behalf of the third respondent, Mr.K.Chandru, learned senior

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counsel appearing for the appellant/Village Panchayat contends that when there are specific statutory provisions for reclassifying the public road within the meaning of Section 2(28) of the Act, which vests with the Panchayat under Section 125(1) of the Act, and the Government is empowered to exclude from the operation of the Act any such public road by a notification under Section 125(2) of the Act, the Government ought not to have passed the impugned G.O. exercising the power conferred under the Board Standing Order 21, as the same violates the spirit and scope of Sections 125(1) and 125(2) of the Act as well as the principles of natural justice.

13. Per contra, Mr.E.Sampath Kumar, Government Advocate appearing on behalf of the respondents, reiterating the stand taken by the respondents as explained in the counter affidavit filed on behalf of the third respondent, referred to above, attempts to sustain the power of the Government to pass the impugned G.O. However, the learned counsel for the respondents fairly concedes that no notification was issued by the Government for reclassifying the impugned land running through the Survey Nos.237 and 238 of Vengaivasal Village from Vandi-patti Poromboke (cart-track) to Natham Poromboke, by exercising the power conferred under Section 125(2) of the Act till date.

14. We have given careful consideration to the submissions of both sides.

15. Under the facts and circumstances of the case explained above and in the light of the rival contentions advanced on behalf of both sides, the core question that arises for our consideration in the above appeal is "whether the action of the Government, first respondent, in passing the impugned government order, viz., G.O.(Grade) No.239, Revenue Department, dated 27.2.1997, by exercising the power conferred under Board Standing Order 21, reclassifying the public road, which power vests with the appellant/village panchayat (local body) whose vested right, power and jurisdiction are well defined under the provisions of the Tamil Nadu Panchyats Act, 1944, ignoring the concept of Panchayat Raj enabling them to function as institutions of self-government under Article 243G of the Constitution of India, is valid?"

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16.1. In this regard, we are inclined to refer the definition of "public road" as defined under Section 2(28) of the Act, the vesting right of the Panchayat on the same under Section 125(1) of the Act, and the power of the Government to exclude from the operation of the Act any such public road, by notification, provided under Section 125(2) of the Act.

16.2. Sections 2(28) and 125 of the Act read as under:

"Section:2 – Definitions.-

(1) to (27) ...

(28) "public road" means any street, road, square, court, alley, passage, cart-track, foot-path or riding-path, over which the public have a right of way, whether a thoroughfare or not, and includes-

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such road, public bridge or causeway; and

(c) the drains attached to any such road, public bridge or causeway, and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property, whether that property is private property or property belonging to the State or Central Government."

Section:125 - Vesting of public roads in village panchayat.-

(1) All public roads in any village (other than roads which are classified by the Government as National Highways or State Highways or as major district roads or as panchayat union roads) shall vest in the village panchayat together with all pavements, stones, and other materials thereof, all works, materials and other things provided therefor, all drains, drainage works, tunnels and culverts whether made at the cost of the village panchayat or otherwise, in, alongside or under such roads,and all works, materials and things appertaining thereto.

(2) The Government may, by notification, exclude from the operation of this Act any such public road, drain, drainage work, tunnel or culvert and may also modify or cancel such notification."

(emphasis supplied)

17. A bare reading of the definition of "public road" specifically includes a "cart-track" and therefore, there cannot be any dispute that the impugned Vandi-patti

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poromboke (cart-track) is covered within the definition of "public road" under Section 2(28) of the Act. Consequently, by operation of Section 125(1) of the Act, referred to above, the impugned Vandi patti Poromboke (cart-track), which is read into the definition of "public road", shall vest with the Village Panchayat. Such a vested right conferred on the village panchayat with respect to the public road, in our considered opinion, cannot be interfered or encroached even by the Government, without giving any opportunity to the Village Panchayat (local body) and getting their consent for such reclassification.

18. In the instant case, at no point of time, the Government had sought for the consent of the Village panchayat by appropriate resolutions for the proposal of reclassification of the impugned land from Vandi-patti Poromboke (cart-track) to Natham Poromboke. Obviously, there is a glaring violation not only to the principles of natural justice but also to the procedure contemplated for such reclassification.

19. Of course, an attempt was made on behalf of the Government to say that since the Government is empowered, by notification, to exclude from the operation of the Act any such public road, by exercising the power conferred under Section 125(2) of the Act, the Village Panchayat need not be given any notice for the said proposal and the consent of the Village Panchayat by way of appropriate resolutions is also not required, and what was required is only a consultation but not consent, as held by the learned Single Judge.

20. We are, however, unable to appreciate such proposition because the Tamil Nadu Panchayats Act, 1994 is intended to implement the principles relating to Panchayats in the Constitution to provide for among other things, Grama Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairperson of Panchayats at such levels; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes; and also to give sufficient safeguards for protecting their vested rights conferred under the provisions of the Act within their respective jurisdictions.

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21. In the post independent period, realising the fact that social, political and economic development of rural area depends on the successful and effective working of 'local self Government', Gandhiji had aptly remarked that `True democracy cannot be worked by twenty men sitting at the Centre. It has to be worked from below by the people of every village'. Article 40 in Part IV of the Constitution of India directs that the States shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self Government.

22. The concept of Panchayat Raj system in our country, enshrined under Chapter IX of the Constitution of India relating to the Panchayats, vide Articles 243 and 243A to 243O of the Constitution, is generally a three-tier arrangement, the first at village or group of villages (lower level), the second at block level (middle level) and third at the district level (upper level), intended to give a free hand to the respective panchayat in the matters of their internal administration which is well defined under the statutory provisions of the Act. Such power conferred by the statutory provisions in consonance with the spirit and object of the Constitutional provisions inserted by the Constitution (73rd Amendment Act), 1992, whereunder Part IX of the Constitution of India was inserted, in our considered opinion, cannot be lightly sidelined by the Government by passing the impugned G.O. resorting to the provisions of the Board Standing Order 21, or otherwise the consequence will be not only an infringement of the powers of the Village Panchayat conferred under the Act, but also a violation to Article 243G of the Constitution of India, whereunder respective panchayats are endowed with such powers and authority as may be necessary to enable them to function as institutions of self-government.

23. The power conferred on the Government under Section 125 (2) of the Act is not absolute and independent but the same is subject to the power conferred under Section 125(1) of the Act protecting the vested right of the village panchayats, which is endowed with such powers and authority as may be necessary to enable them to function as institutions of self-government, as provided under Article 243G of the Constitution of India. If that be so, we are unable to agree with the view of the learned Single Judge that mere consultation of the panchayat is required and not their consent.

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24. In the instant case, it is clear from the impugned G.O. that the Government ignoring the vested right of the appellant/village panchayat conferred under Section 125(1) of the Act with respect to the "public road" in question passed impugned government order without even following the procedure contemplated under Section 125(2) of the Act for taking appropriate steps to exclude from the operation of the Act any such public road, and had chosen to reclassify the impugned Vandi-patti (Cart-track) poromboke as Natham poromboke and assign the same to the individuals, of course, resorting to Board Standing Order 21.

25. The question whether the Government is entitled to invoke the Board Standing Order ignoring the provisions of the Land Acquisition Act came for consideration before the Apex Court in Government of Andhra Pradesh & another v. Syed Akbar, 2004 (5) CTC 506, in a matter of assignment of land vested with the Government, which was acquired for public purpose, but was attempted to be used for other public purpose, viz., for grant of assignments, invoking the Andhra Pradesh Board Standing Order, 90(32), and the Apex Court held as follows:

> "..13. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.
>
> 14. At the hearing, we specifically asked learned counsel for the respondent whether the Board's Standing Order 90(32) was issued under any particular statute, the learned counsel was not able to point out to any provision of law under which it was issued. He was not in a position to show that the said order bears any statutory force. Even otherwise, as per para 32 of the said order, the land acquired, no longer required for the public purpose for which it was acquired, could not be disposed of in favour of any person other than the citizen of India and that too without the sanction of the Government. If the land acquired for the public purpose is specifically relinquished, such

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land could be disposed of as stated in the said paragraph. If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered desirable in each case. If the acquired land was an agricultural land at the time of acquisition, it should be disposed of inviting for sale in public auction by giving wide publicity in respect of sale. If at the time of sale, anybody puts forth his claim in respect of any field either as an adjacent owner or as an original owner, the sale of that field should be stopped and his claim investigated and disposed of in the manner specified in sub-clauses (i) and (iv) of Note (2) of the Board's order 90 (32). If it is found that his claim is not proved, the field should be sold by public auction. In the case on hand, there is nothing on record to show that the part of the acquired land which remained unused was relinquished by the Government. A letter of Resident Engineer stated that the unused land was no more required cannot amount to relinquishment of the said land by the competent authority. In order to make a claim under para 32 of the said Board's Standing Order in the first place, it was necessary that the competent authority had subsequently relinquished the unused land. After such relinquishment of the land, the land had to be notified for sale in public auction. If at the time of sale of such land, the original owner made a claim, sale could be stopped and his claim could be investigated and thereafter the land was to be disposed of in the manner specified under the said paragraph. Added to this, by virtue of the amendment to para 32 brought about by G.O.Ms.No.783, dated 9.10.1998, the land for the public purpose shall be utilized for the same purpose for which it was acquired as far as possible and in case the land is not used for the purpose for which it was acquired due to any reason, the land shall be utilized for any other public purpose as deemed fit. It appears this amendment was not brought to the notice of the High Court.

15. Chapter V of the Act deals with occupation of khalsa land and right of occupant. Under Section 54, procedure is prescribed for acquiring unoccupied land. This Section enables a person to submit a petition to Tehsildar if he is desirous of taking unoccupied land. On such application, the Tehsildar

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may in accordance with the rules made by the Government give permission on writing for occupation. Section 54-A indicates the procedure in respect of land acquired for the purpose of public benefit and which is no more required. It is clear from plain and clear language of the said Section that when an agricultural land acquired for public benefit is no longer required, the patta thereof shall be made in the name of the person or his successor from whom such land was acquired provided he consents to refund the compensation originally paid to him. This Section does not say that the agricultural land acquired for public benefit is no longer required for the purpose for which it is acquired. This Section can be attracted only in a case where agricultural land acquired for public benefit is no longer required not necessarily for the specific purpose for which it was acquired. Added to this, that the land is no more required is a decision required to be made by the competent authority. As in the present case, mere letter of Resident Engineer that the unused land is no more required is not enough. When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the question of reconveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decision of this Court aforementioned. Whether the unused remaining land out of the acquired land was sufficient or not for the purpose of construction of Mandal Revenue Office could not be decided by the High Court. It was for the competent authorities to decide about the same. The High Court, in our view, was not right in saying that the proposal to construct the Mandal Revenue Office in the unused land acquired was an after-thought. No material was placed on record to attribute any mala fides on the part of the authorities or to support the case that the proposal to build a Mandal Revenue Office was an after-thought."

(emphasis supplied)

26. In view of the ratio enunciated from the decision in Government of Andhra Pradesh & another v. Syed Akbar, 2004 (5) CTC 506, we do not find any difficulty to answer the legal issue raised in this appeal in negative to the effect that the Government shall not resort to exercise their powers under the Board Standing Orders which have no

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statutory force, ignoring the statutory provisions, viz., Section 125(2) of the Act, which could be exercised, in our considered opinion, by following appropriate procedure contemplated under law.

27. It is trite law that the court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words, vide Nasiruddin v. Sita Ram Agarwal,(2003) 2 SCC 577.

28. The words employed in Section 125(2) of the Act viz., the Government is empowered to exclude from the operation of the Act any such public road by way of a notification, cannot be lightly disregarded.

29. In the instant case, we are satisfied that the impugned G.O. is obviously passed ignoring the provisions of Sections 125(1) read with Sections 2(28) and 125(2) of the Act, as no steps have been taken by the Government to issue any notification till date, in a manner contemplated under law, and therefore, the impugned order is liable to be set aside.

In the result, the writ appeal is allowed and the impugned G.O. as well as the consequential proceedings, if any, stand quashed. However, taking into consideration the reasons that weighed the Government to allot the lands to the last grade employees of the Raj Bhavan, we add that the Government may consider to allot equal extent of land to the deserving allottees from any alternate site, if they are so advised. No costs. Consequently, C.M.P.No.10705 of 1998 is closed.

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Asst.Registrar

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Sub Asst.Registrar

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To:

1. Secretary to the Government
   Revenue Department
   Fort St.George
   Chennai - 600 009.

2. The Commissioner of Land
   Administration, Ezhilagam
   Chepauk, Chennai-600 005.

3. The District Collector
   Kancheepuram.

4. The Commissioner,
   St.Thomas Mount Panchayat Union,
   Chennai.

1 cc to MR. K. Kannan, Advocate, SR. 56871
1 cc to Govt. Pleader, SR. 57310

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